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14 **UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA**

16 ENTROPIC COMMUNICATIONS,  
17 LLC,

18 Plaintiff,

19 v.

20 DISH NETWORK CORPORATION,  
21 *et al.*,

22 Defendants.

23 ENTROPIC COMMUNICATIONS,  
24 LLC,

25 Plaintiff,

26 v.

27 COX COMMUNICATIONS, INC., *et*  
28 *al.*,

29 Defendants.

30 Case No. 2:23-cv-1043-JWH-KES  
31 (Lead Case)

32 Case No. 2:23-cv-1047-JWH-KES  
33 (Related Case)

34 Case No. 2:23-cv-1048-JWH-KES  
35 (Related Case)

36 Case No. 2:23-cv-5253-JWH-KES  
37 (Related Case)

38 **ENTROPIC COMMUNICATIONS,  
39 LLC'S NOTICE OF MOTION AND  
40 MOTION TO DISMISS COX  
41 DEFENDANTS' AMENDED  
42 COUNTERCLAIMS PURSUANT TO  
43 RULE 12(b)(6); MEMORANDUM OF  
44 POINTS AND AUTHORITIES IN  
45 SUPPORT THEREOF;  
46 DECLARATION OF CASSIDY T.  
47 YOUNG IN SUPPORT THEREOF;  
48 [PROPOSED] ORDER**

49 Hearing Date: March 29, 2024  
50 Hearing Time: 9:00 a.m.  
51 Courtroom: 9D (Santa Ana)

1 ENTROPIC COMMUNICATIONS,  
2 LLC,

3 Plaintiff,

4 v.

5 COMCAST, *et al.*,

6 Defendants.

7

8

9 ENTROPIC COMMUNICATIONS,  
10 LLC,

11 Plaintiff,

12 v.

13 DIRECTV, LLC, *et al.*,

14 Defendants.

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

3       **PLEASE TAKE NOTICE** that on March 29, 2024, or as soon thereafter as  
4       this matter may be heard, in Courtroom 9D of the United States District Court for the  
5       Central District of California, located at 411 W. 4<sup>th</sup> Street, Santa Ana, California  
6       92701, Entropic Communications, LLC (“Entropic”) will, and hereby does, move the  
7       Court for an Order dismissing Cox Communications, Inc., CoxCom LLC, and Cox  
8       Communications California, LLC’s (collectively, “Cox”) Amended Counterclaims  
9       against Entropic in their entirety and with prejudice. This Motion is made pursuant  
10      to Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the ground that Cox’s  
11      Amended Counterclaims fail to state a claim upon which relief can be granted.

12        Specifically, Cox alleges that Entropic tortiously interfered with the  
13 contractual obligations of third party MaxLinear, but Cox's allegations do not  
14 plausibly show that MaxLinear's conduct actually breached the agreement, that Cox  
15 suffered a cognizable harm as a result of the alleged breach, or that Entropic  
16 performed intentional acts designed to induce MaxLinear's conduct. Cox further  
17 seeks a declaratory judgment that the patent assignments from MaxLinear to Entropic  
18 are void, but Cox alleges no plausible reason why the patent assignments violate  
19 MaxLinear's contractual obligations, nor any other legal basis for voiding the  
20 assignments.

21 This Motion is made following a conference of counsel pursuant to Local Rule  
22 7-3 that took place on January 30, 2024. The Parties thoroughly discussed the  
23 substance and potential resolution of the filed Motion.

24 The Motion is based on this Notice, the Memorandum of Points and  
25 Authorities attached hereto, the attached Declaration of Cassidy Young, the complete  
26 Court files and records in this action, and all matters that may be properly considered

1 by the Court at the hearing on this Motion.

2 Dated: February 6, 2024

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Cox’s tortious interference claim fails on numerous grounds. First, Cox fails to plead that it has suffered a cognizable harm.<sup>1</sup> The only meaningful “harm” Cox identifies is its need to defend itself in this case, but nothing in the contract at issue gave Cox any right or expectation to be free of infringement suits—nor is defending a suit brought in good faith a legally cognizable harm. Second, Cox fails to plead an actual breach of the contract. Despite taking a shotgun approach and alleging *seven* distinct breaches by MaxLinear, Cox still does not plausibly allege any conduct by MaxLinear that actually violates its contractual obligations.

The contract at issue is a common creature of standards organizations. These agreements provide the right to receive a license (as opposed to being enjoined) in exchange for a FRAND (fair, reasonable, and non-discriminatory) fee. The MoCA IPR Policy does not provide a free license; it does not permit Cox to infringe without paying; and it does not provide Cox any freedom or immunity from lawsuits for such infringement. Cox does not plead otherwise because it cannot. The only contractual right plausibly pled is one Cox chose to never exercise—to *request* a FRAND license. Cox never wanted to pay for its use of the intellectual property at issue, and thus never asked for a license (despite Entropic affirmatively reaching out). The result is the present patent infringement suit. Cox fails to plead that anything in the IPR Policy or any other contract makes it immune from suit. Indeed, the IPR Policy facially contemplates that patent owners can indeed enforce their rights through litigation. Cox didn’t want a license and cannot turn the IPR Policy inside-out to claim that it has been denied any rights.

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<sup>1</sup> The following terms are used herein: Plaintiff Entropic Communications, LLC (“Entropic”); Cox Communications, Inc., CoxCom LLC, and Cox Communications California, LLC’s (collectively, “Cox”); MaxLinear Communications LLC and MaxLinear, Inc. (collectively, “MaxLinear”); Multimedia over Coax Alliance (“MoCA”); twelve patents asserted by Entropic against Cox (“Asserted Patents”).

1 Cox's new declaratory judgment counterclaim fares no better. Cox asks this  
2 Court for a declaratory judgment that the patent assignments of the Asserted Patents  
3 from MaxLinear to Entropic are void. But this claim fails as a matter of law because  
4 there is no legal basis that could entitle Cox to such relief. The only theories  
5 suggested by the Amended Counterclaims are contrary to established law.

6 Cox's Amended Counterclaims are—as before—nothing more than an  
7 improper (and strained) effort to inject non-party MaxLinear into this patent  
8 litigation—a party who otherwise would not be subject to this Court's jurisdiction.<sup>2</sup>  
9 But Cox's clear desire for MaxLinear to participate as a party in this litigation does  
10 not provide a legal basis for their claims. The Court should dismiss the counterclaims  
11 with prejudice.

12 **II. FACTUAL BACKGROUND**<sup>3</sup>

13 Entropic filed a Complaint against Cox for infringement of 12 patents related  
14 to MoCA technology. *See* 23-cv-1047, DE 1 ¶ 5. MoCA technology enables in-home  
15 networking. *See id.* ¶¶ 34–48. Cox filed an answer and later sought leave to amend  
16 its answer to assert counterclaims. *See* 23-cv-1047, DE 94. Entropic and MaxLinear  
17 moved to dismiss those counterclaims, after which Cox filed an amended set of  
18 counterclaims. *See* 23-cv-1043, DE 276 (“Amended Counterclaims”). This Motion  
19 challenges Counts II and III of the Amended Counterclaims, which are asserted  
20 against Entropic. Count II asks the Court for a declaratory judgment voiding the  
21 assignment of the Asserted Patents from MaxLinear to Entropic, and Count III

22  
23 <sup>2</sup> Cox's claims against MaxLinear do not present a federal question, and Cox's  
24 allegations confirm there is not diversity between the parties. *See* 1043 DE 266-1  
¶¶ 518–20, 522, 524.

25 <sup>3</sup> For purposes of this Motion only, and consistent with the standard described in Rule  
26 12(b)(6) of the Federal Rules of Civil Procedure, Entropic has assumed the truth of  
27 all well-pleaded allegations in Cox's counterclaims. *See Iletto v. Glock Inc.*, 349 F.3d  
1191, 1200 (9th Cir. 2003) (“We must take ‘all well-pleaded allegations of material  
fact as true and construe them in the light most favorable to the plaintiff’”). Entropic  
28 reserves the right to dispute all factual allegations and legal conclusions recited in the  
counterclaims.

1 alleges that Entropic tortiously interfered with MaxLinear's contractual obligations  
2 under the MoCA Alliance's IPR Policy. *See* 1043 DE 266-1 ¶¶ 580–86.

3 The MoCA Alliance is an organization that produces standards for in-home  
4 networking technology. *See* 1043 DE 266-1 ¶ 532. To encourage industry  
5 participants to adopt the MoCA standard, the MoCA Alliance issued the IPR Policy.  
6 *See* 23-cv-1047, DE 94-1 ("IPR Policy"). The policy requires members to license to  
7 each other the claims of patents that are essential to practicing the MoCA standard  
8 ("Essential Patent Claims"), under terms that are fair, reasonable, and non-  
9 discriminatory ("FRAND"). IPR Policy § 5.1.1.

10 Importantly, the IPR Policy is not a license and does not purport to be, nor  
11 does Cox plead such. The IPR Policy is a framework for handling the IP rights  
12 relevant to the standard. Any actual license must be negotiated as a separate  
13 instrument. *See id.* ("each Alliance Party agrees to offer and attempt to negotiate a  
14 license . . . under the terms of a separate written agreement"). Furthermore, the  
15 MoCA IPR Policy grants Alliance Parties the right to request a FRAND license. *See*  
16 *id.* ("upon the written request of any other then-current Alliance Party"). The rights-  
17 holder is then obligated to offer a license on FRAND terms. *Id.*

18 If no license is achieved, because the prospective licensee fails to request a  
19 license (or rejects the FRAND license offer), the IPR Policy expressly provides that  
20 a party may seek damages for infringement of an Essential Patent Claim. *See id.*  
21 ("Such waiver of injunctive relief shall not prohibit the waiving Alliance Party from  
22 seeking or receiving damages in connection with such infringement."). There is no  
23 plausible view of the IPR Policy as authorizing infringement or providing any party  
24 freedom from an infringement suit. The opposite is contemplated by the Policy.

25 MaxLinear joined MoCA around August 2011, signing a MoCA Associate  
26 Agreement. *See* 1043 DE 266-1 ¶¶ 534–35. MaxLinear assigned the Asserted Patents  
27 to Entropic on March 31, 2021. *Id.* ¶ 560. Cox alleges that these assignments

1 constituted a breach of the IPR Policy by MaxLinear and are therefore void. *See id.*  
2 ¶ 576, 580–82. Cox further alleges that MaxLinear breached confidentiality  
3 obligations by disclosing confidential MoCA documents to Entropic. *See id.* ¶ 546,  
4 569–70, 581. Finally, Cox alleges that Entropic tortiously interfered with the IPR  
5 Policy by inducing MaxLinear’s allegedly breaching conduct. *See id.* ¶¶ 583–86.  
6 Entropic disputes these allegations.

7 **III. LEGAL STANDARD**

8 Rule 12(b)(6) of the Federal Rules of Civil Procedure requires dismissal of a  
9 complaint where “the complaint lacks a cognizable legal theory or sufficient facts to  
10 support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521  
11 F.3d 1097, 1104 (9th Cir. 2008). Factual allegations must be enough to “raise a right  
12 to relief above a speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
13 555 (2007). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does  
14 not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’  
15 of his ‘entitlement to relief’ requires more than labels and conclusions, and a  
16 formulaic recitation of the elements of a cause of action will not do.” *Id.* While a  
17 court generally must accept plaintiff’s factual allegations as true, it need not accept  
18 as true conclusory allegations or legal characterizations cast in the form of factual  
19 allegations. *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

20 **IV. ARGUMENT**

21 **A. Cox fails to state a claim that Entropic tortiously interfered with  
22 the MoCA IPR Policy.**

23 To state a claim for tortious interference with contract, the party asserting the  
24 claim must show: “(1) a valid contract between [the party asserting the claim] and a  
25 third party; (2) defendant’s knowledge of the contract; (3) defendant’s intentional  
26 acts designed to induce breach or disruption of the contract; (4) actual breach or  
27 disruption; and (5) resulting damage.” *Name.Space, Inc. v. Internet Corp. for*

1 *Assigned Names & Numbers*, 795 F.3d 1124, 1133 (9th Cir. 2015) (applying  
2 California common law on tortious interference) (quoting *Family Home & Fin. Ctr.,*  
3 *Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 825 (9th Cir. 2008)). At least  
4 two of these elements are absent from the amended counterclaim, as described below.  
5 This is fatal because while “the pleading standard Rule 8 announces does not require  
6 ‘detailed factual allegations,’ [] it demands more than an unadorned, the-defendant-  
7 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009)  
8 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), 550 U.S. at 555).

9 In essence, Cox alleges that Entropic induced MaxLinear to commit various  
10 breaches of the IPR Policy. Although Cox alleges seven distinct ways that MaxLinear  
11 supposedly breached the policy, these fall into two basic categories: (i) allegations  
12 that the assignment of the Asserted Patents from MaxLinear to Entropic was  
13 improper; and (ii) allegations that MaxLinear disclosed confidential MoCA  
14 documents to Entropic. In both cases, Cox’s tortious interference counterclaim fails  
15 to meet the pleading standard.

16 **1. Cox fails to state a claim for tortious interference based on  
17 MaxLinear’s assignment of the Asserted Patents to  
18 Entropic.**

19 Cox alleges that Entropic induced MaxLinear to assign the Asserted Patents  
20 over to Entropic and that this transaction violated various terms of the IPR Policy.  
21 Specifically, Cox alleges that MaxLinear (a) attempted to circumvent an alleged  
22 obligation to license essential patent claims on FRAND terms; (b) ceased to own the  
23 Asserted Patents; (c) gave up its authority to grant licenses to the Asserted Patents;  
24 (d) transferred the Asserted Patents so as to circumvent its licensing obligations; (e)  
25 assigned the Asserted Patents purportedly free of encumbrances; and (f) executed  
26 assignment agreements that omit required language. *See* 1043 DE 266-1 ¶ 576. None  
27 of these are breaches of the IPR Policy, however, nor has Cox alleged a cognizable  
28

1 injury flowing from this alleged conduct. As a result, Cox has not plausibly stated a  
2 claim for tortious interference because there is no underlying breach of contract.

3 **a. Cox fails to plead that it has suffered a cognizable  
4 injury as a result of the patent assignments.**

5 Cox's counterclaim fails because it has pleaded no facts connecting the patent  
6 assignments to any legally cognizable harm. To plead a tortious interference claim,  
7 a party must plausibly allege "defendant's intentional acts designed to induce breach  
8 or disruption of the contract; [] actual breach or disruption; and [] resulting damage."  
9 *Name.Space*, 795 F.3d at 1135. Here, aside from vague and barebones allegations  
10 that it "has been injured in their business or property, and has suffered and will  
11 continue to suffer damages" (1043 DE 266-1 ¶ 586), the only specific harm that Cox  
12 pleads is having to defend against this lawsuit. *See* 1043 DE 266-1 ¶ 573 ("Cox has  
13 been forced to defend, and incurred significant expense in defending, an action  
14 concerning patents that, if Plaintiff's averments are correct, are not owned or ownable  
15 by Plaintiff, and as to which Cox was entitled to either an offer and negotiation of a  
16 RAND license from MaxLinear or is entitled to request or require a RAND license  
17 from MaxLinear."). These allegations cannot state a plausible claim for multiple  
18 reasons.

19 First, Cox does not plead that the IPR Policy grants it a right to be free of  
20 actions to enforce the patents or to seek damages. Indeed, the contrary is true. The  
21 IPR Policy specifically states that it "shall not prohibit the [signatory] Alliance Party  
22 from seeking or receiving damages in connection with [patent] infringement." IPR  
23 Policy § 5.1.1. In other words, the IPR Policy specifically permitted MaxLinear to  
24 sue Cox for patent infringement and seek damages. *Id.* A claim that Entropic did  
25 something its predecessor-in-interest, MaxLinear, was contractually authorized to do  
26 cannot be a plausible allegation of "resulting damage" from any alleged breach of the  
27 IPR Policy. *See Name.Space*, 795 F.3d at 1135. The alleged injury of defending the  
28

1 infringement lawsuit is not causally connected to any alleged breach.

2 Second, the litigation privilege means that Entropic’s decision to bring this  
3 lawsuit cannot be considered a cognizable harm to Cox. Under California law, “[t]he  
4 bringing of a colorable claim is not actionable.” *Pacific Gas & Electric Co. v. Bear  
5 Stearns & Co.*, 50 Cal.3d 1118, 1130–31 (1990). Moreover, “a patentee, acting in  
6 good faith on its belief as to the nature and scope of its rights, is fully permitted to  
7 press those rights even though he may misconceive what those rights are.” *Mikohn  
8 Gaming Corp. v. Acres Gaming, Inc.*, 165 F.3d 891, 897 (Fed. Cir. 1998).

9 Indeed, the only conceivable right Cox had with respect to MaxLinear’s  
10 patents was the right to ask for (and after asking, receive) a FRAND license offer—  
11 a right it never invoked before the filing of this suit, even after receiving letters from  
12 Entropic offering a license on FRAND terms. *See* Young Decl. Exhibits D–E (pre-  
13 suit communications from Entropic to Cox). As previously discussed, the IPR Policy  
14 is not itself a license. A patent owner is required to offer and attempt to negotiate a  
15 license only “upon the written request of any other then-current Alliance Party.” IPR  
16 Policy § 5.1.1. Cox alleges in only the barest of terms that “Plaintiff additionally did  
17 not and, despite Cox’s prior request in writing, has not, provided or procured any  
18 RAND-compliant offer.” 1043 DE 266-1 ¶ 571. However, Cox does not provide *any*  
19 details about this alleged writing. Cox does not provide a copy of its request, nor does  
20 it identify when or to whom the request was allegedly sent. On the contrary, Entropic  
21 has alleged that it initiated good-faith licensing discussions by sending multiple  
22 communications to Cox between August 2022 and January 2023. *See* 23-cv-1047,  
23 DE 1 ¶ 27. Cox admits it has not responded to any of these communications. *See*  
24 1043 DE 266-1 ¶ 27. Therefore, Cox has not plausibly alleged that it was denied a  
25 FRAND license offer or that Entropic made no “attempt to negotiate” such a  
26 license—indeed uncontested facts show the opposite. *See* IPR Policy § 5.1.1; *see*  
27 also Young Decl. Exhibits D–E. Moreover, Cox cannot claim to have suffered a  
28

1 cognizable harm while, by its own admission, it has not availed itself of Entropic's  
2 attempts at negotiation. *Copeland v. Baskin Robbins USA*, 117 Cal.Rptr.2d 875, 886  
3 (2002) ("reliance damages are the only form of recovery available in an action on a  
4 contract to negotiate an agreement").

Finally, there is no merit to Cox’s assertion that it is entitled to receive an appropriate license offer from MaxLinear, and *only* MaxLinear. *See* 1043 DE 266-1 ¶¶ 516, 573. As discussed in the next section, there is no language in the IPR Policy that would confer such a right, nor does Cox allege any plausible reason why it would be harmed by having to negotiate with Entropic as opposed to MaxLinear. The policy plainly states that “the licensing obligations under this IPR Policy are intended to be binding (e.g., as encumbrances) on all successors-in-interest regardless of whether such provisions are included.” IPR Policy § 5.1.2. Thus, according to the plain language of the IPR Policy, Essential Patent Claims would continue to be subject to FRAND obligations, regardless of whether the patentee is MaxLinear, Entropic, or someone else entirely. This is why Cox can allege no harm in having to take a FRAND license from Entropic instead of MaxLinear. The counterclaim thus fails to state any resulting harm.

**b. The assignment of the Asserted Patents does not violate any terms of the IPR Policy.**

20 Cox alleges that MaxLinear’s transfer of the Asserted Patents to Entropic  
21 breached Section 4.1.1 of the IPR Policy, which Cox reads as a wholesale ban on  
22 assigning or transferring patents. *See* 1043 DE 266-1 ¶ 576 (alleging MaxLinear  
23 “breach[ed] its agreement that it would own any necessary patents”). This reading  
24 directly conflicts with, and renders superfluous, other sections of the IPR Policy and  
25 therefore is implausible on its face. For starters, the IPR Policy expressly allows for  
26 assignments and transfers to third parties. Section 5.1.2 is entitled “**Transfer of**  
27 **Essential Patent Claims**” and states that “[a]ny sale, assignment or other transfer by

1 an Alliance Party or its Affiliates to an unaffiliated third party of an Essential Patent  
2 Claim . . . shall be made subject to the terms in this IPR Policy.” IPR Policy § 5.1.2.  
3 This section even contemplates follow-on transfers by those third parties “with the  
4 goal of binding each successor-in-interest.” *Id.* What’s more, Section 4.1.2,  
5 immediately following Section 4.1.1, states that an Alliance Party “represents and  
6 warrants and agrees that it has not and ***will not*** intentionally transfer or otherwise  
7 encumber its patents or patent applications . . . for the purpose of circumventing the  
8 obligation to grant licenses contained in this IPR Policy.” *Id.* § 4.1.2 (emphasis  
9 added). All of this is entirely unnecessary if the Alliance Party is barred from any  
10 transfers in the first place.

11 Read in its proper context in the IPR Policy, it is evident that Section 4.1.1  
12 exists merely to confirm that Alliance Parties (including MaxLinear) are not  
13 assigning their patent rights to the MoCA Alliance by virtue of becoming a member  
14 or signing the IPR Policy:

15 All right, title and interest in and to Alliance Party Intellectual Property  
16 shall be owned exclusively by the Alliance Party(ies) who developed  
17 the Intellectual Property or by the Alliance Party(ies) to whom the  
18 Intellectual Property was properly and legally assigned.

19 IPR Policy § 4.1.1. Because the IPR Policy is unambiguous in allowing assignment  
20 of essential claims to third parties, Cox cannot plausibly allege that MaxLinear  
21 “breach[ed] its agreement that it would own any necessary patents.” 1043 DE 266-1  
22 ¶ 576.

23 For the same reasons, Cox also cannot plausibly allege that MaxLinear  
24 “breach[ed] its representation, warranty, and covenant that MaxLinear would  
25 maintain the power and authority to grant patent licenses as required under the IPR  
26 Policy.” *Id.* This allegation is directly at odds with IPR Policy provisions allowing

1 assignment to third party successors-in-interest.<sup>4</sup> This is dispositive.

2 Cox attempts to defend the plausibility of its claim by reference to Section  
3 4.1.2, but must invent an entirely contrary meaning to the plain language of the  
4 Policy. Cox alleges that “under Section 4.1.2, the Alliance Parties promised that each  
5 would always maintain the right to grant the required licenses under the IPR Policy.”

6 *Id.* ¶ 548. This is a blatant misreading of Section 4.1.2, which states:

7 Alliance Party represents, warrants and covenants . . . that it has the  
8 power and authority to bind itself and all of its Affiliates to the  
9 obligations contained herein, including without limitation, the  
10 obligation to grant patent licenses as set forth in this IPR Policy.

11 There is no promise here that an Alliance Party will *always* have such power and  
12 authority—only that it *did* have such power and authority at the time the policy was  
13 executed. Not only does Cox’s reading ignore the plain language of the section, it  
14 directly conflicts with Section 5.1.2 which allows transfers. Indeed, Cox’s reading is  
15 not even consistent within Section 4.1.2 itself, which states that an Alliance Party  
16 will not “intentionally transfer or otherwise encumber its patents . . . **for the purpose**  
17 **of circumventing the obligation to grant licenses** contained in this IPR Policy.” IPR  
18 Policy § 4.1.2.

19 Nor can Cox plausibly allege that the assignment itself was a breach because,  
20 according to Cox, it did not include specific language, or because, again according to  
21 Cox, it purported to assign the patents free of encumbrances. *See* 1043 DE 266-1 ¶  
22 576 (accusing MaxLinear of “(e) improperly assigning the Asserted Patents free of  
23 any encumbrances, including those created by the IPR Policy; [and] (f) executing

24 <sup>4</sup> Section 5.1.2 of the IPR Policy states that “any agreement for transferring or  
25 assigning Essential Patent Claims . . . includes a provision that such transfer or  
26 assignment is subject to existing licenses and obligations imposed on the Alliance  
27 Party by this Agreement” and that “the licensing obligations under this IPR Policy  
28 are intended to be binding (e.g., as encumbrances) on all successors-in-interest.” The  
reference to “successors-in-interest” confirms that the policy is agnostic as to *who* is  
granting licenses to essential patent claims, as long as those licenses are on FRAND  
terms.

1 assignment agreements that omit the provisions required by the IPR Policy”). As an  
2 initial matter, Cox’s allegations are factually (and indisputably) wrong. Section 5.7  
3 of the Patent Purchase Agreement (“PPA”) between MaxLinear and Entropic  
4 [REDACTED]  
5 [REDACTED]. *See* Young Decl. Exhibit A (“PPA”) § 5.7 ([REDACTED]  
6 [REDACTED]); *see also* PPA at Exhibit I ([REDACTED]). The PPA further states that  
7 ([REDACTED]). The PPA further states that  
8 MaxLinear [REDACTED]  
9 [REDACTED] PPA § 5.7. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] *Id.*

13 As Cox is well aware—*because Entropic produced it to Cox in the companion*  
14 *case, No. 23-cv-1049*—a copy of the MoCA IPR Policy was provided to Entropic in  
15 compliance with the PPA. Cox’s allegation that the transfer purported to wipe away  
16 the IPR Policy is demonstrably false. [REDACTED]

17 [REDACTED] *See* PPA § 5.7. The sections  
18 referenced by Cox do not purport to transfer the patent without encumbrances; rather  
19 they state that [REDACTED]  
20 [REDACTED].

21 But even if the PPA had purported to transfer the patents without  
22 encumbrances, as Cox claims, the counterclaim still fails because legal  
23 encumbrances, such as the licensing policy of MoCA, “run with the patent.” *See*  
24 *Datatreasury Corp. v. Wells Fargo & Co.*, 552 F.3d 1368, 1372 (Fed. Cir. 2008). As  
25 explained by the District Court for the Northern District of California:

26 It is a longstanding principle that an assignee of a patent takes the patent  
27 subject to prior licenses. Patent owners cannot transfer an interest

1 greater than what they possess, so assignees take a patent subject to the  
2 legal encumbrances thereon. Thus, assignment results in the assignee  
3 stepping into the shoes with regard to the rights that the assignor held  
4 and not in an expansion of those rights. Assignment transfers assignor's  
5 contract rights, leaving them in full force and effect.

6 *Innovus Prime, LLC v. Panasonic Corp.*, 2013 WL 3354390, at \*5 (N.D. Cal. Jul. 2,  
7 2013) (quotes and citations omitted). Moreover, the IPR Policy itself confirms that  
8 "the licensing obligations under this IPR Policy are intended to be binding (e.g., as  
9 encumbrances) on all successors-in-interest ***regardless of whether such provisions  
are included.***" IPR Policy § 5.1.2 (emphasis added). Therefore, Cox cannot plausibly  
10 allege that MaxLinear assigned the patents to Entropic in such a way as to negate the  
11 FRAND licensing obligations.

12 Lastly, Cox cannot plausibly allege that MaxLinear breached the IPR Policy  
13 by "attempting to circumvent" the policy's licensing obligations. *See* 1043 DE 266-  
14 1 ¶ 576 (accusing MaxLinear of "attempting to circumvent its obligation to provide  
15 non-exclusive licenses to any patents containing essential patent claims on FRAND  
16 terms" and "breaching its promise not to transfer patents so as to circumvent the  
17 obligation to grant licenses"). As explained above, MaxLinear could not have  
18 circumvented the IPR Policy's FRAND licensing obligations because these  
19 obligations automatically run with the patents and are binding on any successor-in-  
20 interest to the patents, and the policy is agnostic as to *who* is licensing essential patent  
21 claims as long as those licenses are on FRAND terms. *Innovus Prime*, 2013 WL  
22 3354390 at \*5. Even if it were possible for MaxLinear to breach by merely *attempting*  
23 to circumvent the licensing obligations, there would be no injury because any  
24 Essential Patent Claims remain subject to FRAND licensing requirements. *See*  
25 generally *First Nat. Bank v. Continental Illinois Nat. Bank*, 933 F.2d 466, 469 (7th  
26 Cir. 1991) (finding no injury where defendant attempted unsuccessfully to breach the  
27

28

1 contract).

2 In any event, the Patent Purchase Agreement between MaxLinear and Entropic

3 [REDACTED]  
4 [REDACTED] See PPA § 5.7 [REDACTED]  
5 [REDACTED]

6 [REDACTED]); *see also* PPA at Exhibit I ([REDACTED])

7 [REDACTED]). Moreover, Entropic is not seeking an injunction  
8 in this suit, and Entropic's pre-suit communications to Cox made it clear that Entropic  
9 is seeking a license on FRAND terms. *See* Young Decl. Exhibit D ("Entropic is  
10 committed to licensing these, and all other patents essential to standards, in  
11 accordance with the applicable intellectual property rights policies of relevant  
12 standards bodies"); Exhibit E ("Entropic is committed to licensing its patents that  
13 cover MoCA technology on reasonable terms, without discrimination among the  
14 similarly-situated providers"). Therefore, Cox cannot plausibly allege that  
15 MaxLinear attempted to circumvent the FRAND licensing commitments.

16 For the reasons above, Cox fails to state a claim for tortious interference based  
17 on MaxLinear's assignment of the Asserted Patents to Entropic.

18 **2. Cox fails to state a claim for tortious interference based on  
19 alleged disclosure of confidential information.**

20 Cox further alleges that MaxLinear breached its confidentiality obligations  
21 under the IPR Policy and under Cox's and MaxLinear's respective MoCA  
22 membership agreements.<sup>5</sup> Specifically, Cox alleges that Entropic tortiously  
23 interfered with these confidentiality obligations by inducing MaxLinear to disclose  
24 confidential MoCA standards documents to Entropic, which Entropic then used to

25 \_\_\_\_\_  
26 <sup>5</sup> Cox alleges that it executed a MoCA "promoter member" agreement. *See* 1043 DE  
27 266-1 ¶ 552. Cox further alleges that MaxLinear executed a MoCA "associate"  
28 agreement. *See id.* ¶¶ 535, 546. A complete copy of MaxLinear's associate agreement  
was not produced during discovery. *See id.* ¶ 538, n. 10. However, Cox alleges on  
information and belief that MaxLinear "agreed to the same or equivalent  
confidentiality terms" as Cox. *Id.* ¶ 546.

1 prepare its infringement contentions in this litigation. *See* 1043 DE 266-1 ¶ 546,  
2 569–70. Once again, however, Cox does not plausibly allege that it has suffered a  
3 cognizable harm as a result of the disclosure. Moreover, Cox does not plausibly  
4 allege that Entropic performed intentional acts designed to induce this alleged breach.

5 **a. Cox has not plausibly alleged that MaxLinear violated  
6 confidentiality obligations.**

7 Cox alleges that sometime in 2021 or later, MaxLinear provided Entropic with  
8 copies of the confidential MoCA specifications documents, *i.e.* the documents  
9 showing the technical requirements of the MoCA standard. *See* 1043 DE 266-1 ¶  
10 569. According to Cox, this was a violation of section 5 of the MoCA membership  
11 agreements signed by Cox and MaxLinear. *See id.* ¶ 546. However, section 5 of Cox’s  
12 MoCA membership agreement<sup>6</sup> states in no uncertain terms that [REDACTED]

13 [REDACTED]. *See* Young Decl.

14 Exhibit B § 5.5 [REDACTED]

15 [REDACTED]  
16 [REDACTED] *see also* IPR Policy § 2 (defining  
17 “Confidential Information” as having the meaning set forth in the Applicable  
18 Agreement, *i.e.* Cox’s promoter member agreement).

19 In this case, the specific documents that Cox alleges were improperly disclosed  
20 are versions of the MoCA specification that Entropic cited in its infringement  
21 contentions. *See* 1043 DE 266-1 ¶ 569. The latest of these is version 2.0, which states  
22 that it issued no later than November 21, 2013. *See* Young Decl. Exhibit C at 3. Any  
23 confidentiality obligations owed by MaxLinear to the information disclosed in the  
24

25 <sup>6</sup> Cox did not append a copy of its MoCA promoter member agreement to the  
26 Amended Counterclaims. However, the Court may consider the document because it  
27 forms the basis of Cox’s claim that MaxLinear breached the confidentiality  
28 obligations. *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003) (“Even if a  
document is not attached to a complaint, it may be incorporated by reference into a  
complaint if the plaintiff refers extensively to the document or the document forms  
the basis of the plaintiff’s claim.”)

1 specifications expired well before 2021, when Cox alleges the disclosure to have  
2 occurred. Therefore, Cox has not plausibly alleged a breach of the confidentiality  
3 provisions.

4 **b. Cox has not plausibly alleged that it suffered a  
5 cognizable injury.**

6 Cox does not, and cannot, plausibly allege that it has been harmed by the  
7 alleged disclosure of the MoCA specifications. First, the alleged information is not  
8 Cox's—it belongs to MoCA and its members. *See* 1043 DE 266-1 ¶ 546. By its own  
9 admission, Cox is no longer a member of MoCA. *See* 1043 DE 266-1 ¶ 552 (alleging  
10 that Cox's MoCA membership ended in July 2022). Therefore, Cox cannot claim to  
11 have been harmed by the disclosure of MoCA confidential information generally. *See*  
12 *id.* ¶ 546 ("MoCA and/or any such MoCA members may enforce such obligations of  
13 confidentiality directly.").

14 Second, for the reasons discussed above, the fact that Entropic was able to  
15 bring this lawsuit against Cox is not a cognizable injury. This is expressly permitted  
16 by the IPR Policy at Section 5.1.1 and more generally by the litigation privilege. *See*  
17 IPR Policy § 5.1.1 (stating that the policy "shall not prohibit the Alliance Party from  
18 seeking or receiving damages in connection with [patent] infringement"); *see also*  
19 *Mikohn Gaming*, 165 F.3d at 897 ("a patentee, acting in good faith on its belief as to  
20 the nature and scope of its rights, is fully permitted to press those rights even though  
21 he may misconceive what those rights are").<sup>7</sup> In any event, Entropic could just as  
22 well have filed this lawsuit *without* accessing the MoCA documents, *i.e.* by filing its

23 <sup>7</sup> Even if the litigation privilege did not bar Cox's claim, the claim should be  
24 dismissed because it is an improper effort by Cox to recover attorneys' fees for a tort  
25 where such fees are otherwise not recoverable. Under California law, attorneys' fees  
26 are recoverable "only when the party entitled to costs has a legal basis . . . grounded  
27 in an agreement, statute, or other law, upon which to claim recovery of attorney fees." *Ford Motor Credit Co. v. Hunsberger*, 163 Cal.App.4th 1526, 1530 (2008) (quoting  
28 *Santisas v. Goodin*, 17 Cal.4th 599, 606 (1998)); *see also* Cal. Civ. Proc. Code  
§ 1021. Cox cites to no agreement or statute entitling it to recover attorneys' fees for  
Entropic's alleged tortious interference, and it has therefore failed to allege any  
cognizable harm.

1 complaint and then acquiring the MoCA specifications through discovery. *See*  
2 *generally Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1330 (Fed. Cir.  
3 2009) (“Pleading on ‘information and belief’ is permitted under Rule 9(b) when  
4 essential information lies uniquely within another party’s control”). Cox would have  
5 to plead that it has somehow been harmed because Entropic obtained the  
6 specifications earlier than it otherwise would have, but this is not something Cox can  
7 plausibly allege. It is remarkable that Cox is pleading that it is injured because it  
8 could not conceal its infringement. It is also not a legally cognizable claim.

9 **c. Cox has not plausibly alleged intentional acts by  
10 Entropic designed to induce MaxLinear’s alleged  
11 breach.**

12 Cox’s tortious interference claim is also deficient because it fails to “indicat[e],  
13 beyond conclusory allegations, facts making it plausible that [Entropic] intended to  
14 disrupt [Cox]’s relationship with third parties.” *Soil Retention Prods., Inc. v.*  
15 *Brentwood Indus., Inc.*, 521 F. Supp. 3d 929, 960 (S.D. Cal. 2021). “To adequately  
16 plead the intentional element of a tortious interference claim, a plaintiff must allege  
17 that the defendant desired to interfere with the plaintiff’s contractual arrangement or  
18 that ‘the defendant knew that the interference was certain or substantially certain to  
19 occur as a result of its action.’” *Nestle USA, Inc. v. Best Foods LLC*, 562 F. Supp. 3d  
20 626, 633 (C.D. Cal. 2021) (quoting *Kor. Supply Co. v. Lockheed Martin Corp.*, 29  
21 Cal.4th 1134, 1153 (2003)). In other words, Entropic must have done something  
22 intentionally to induce MaxLinear to disclose the MoCA documents, knowing that  
23 their disclosure would violate MaxLinear’s contractual obligations. This is  
24 completely absent from Cox’s counterclaim. There is no allegation that Entropic was  
25 aware of the confidential nature of the MoCA documents prior to their disclosure; no  
26 allegation that Entropic sought their disclosure; and no allegation that Entropic was  
27 aware of the terms of the membership agreements forming the basis of this claim.

28

- d. **In the alternative, this Court lacks supplemental jurisdiction over the claims related to the disclosure of confidential information.**

Setting aside the sufficiency of Cox’s allegations, this Court nonetheless lacks supplemental jurisdiction over the claim because it is not sufficiently related to the patent infringement claims and defenses in this action. *See* 1043 DE 266-1 ¶ 526 (alleging that the Court has supplemental jurisdiction over Cox’s counterclaims). A federal district court that possesses original jurisdiction over federal claims may hear other state law claims “that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”<sup>8</sup> 28 U.S.C. § 1367(a). In order for a claim to “form part of the same case or controversy,” the claims must “derive from a common nucleus of operative fact.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966). Where original jurisdiction is conferred by a patent infringement claim under 28 U.S.C. § 1338(a), courts have held that supplemental jurisdiction exists over related state law claims only where those claims “depend[] on the resolution of a substantial question of federal patent law.” *Fortinet, Inc. v. Forescout Techs., Inc.*, 2021 WL 5565836, at \*18 (N.D. Cal. Nov. 29, 2021) (citing *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 986 F.2d 476, 477–78 (Fed. Cir. 1993)).

20 Here, Cox alleges that Entropic tortiously interfered with the IPR Policy by  
21 inducing MaxLinear to disclose confidential MoCA documents. 1043 DE 266-1 *See*  
22 ¶ 585. Nothing about this claim depends on the resolution of a substantial question  
23 of patent law. To the contrary, the only connection between this claim and the  
24 underlying patent litigation is Cox’s allegation that “Plaintiff obtained copies of the

<sup>8</sup> Tortious interference is unquestionably a claim that is controlled by state law. *See, e.g., Honey Bum, LLC v. Fashion Nova, Inc.*, 63 F.4th 813, 824 (9th Cir. 2023) (referring to tortious interference with contract as a “California business tort”). All of the parties in this action are incorporated in Delaware. *See* 1043 DE 266-1 ¶¶ 518–20, 522, 524; *see also* 23-cv-1047, DE 1 ¶ 6. Therefore, diversity jurisdiction is lacking. *See* 28 U.S.C. § 1332.

1 otherwise confidential MoCA standards and has relied on those clearly marked  
2 confidential material . . . to prepare and bring this suit.” *Id.* ¶ 569. But that has no  
3 bearing on the substantive patent claims and defenses at issue, *e.g.* infringement,  
4 patent validity, *etc.* Thus, exercising supplemental jurisdiction over Cox’s  
5 counterclaim would be inappropriate here, and the claim should be dismissed for this  
6 independent reason. *See Cheng v. AIM Sports, Inc.*, 2011 WL 13176754, at \*4–5  
7 (C.D. Cal. May 19, 2011) (dismissing state law counterclaims for lack of jurisdiction  
8 where facts necessary to determine whether plaintiff committed tort had “little, if not  
9 nothing,” to do with facts necessary to determine patent infringement).

10 **B. Cox fails to allege a factual or legal basis for voiding the  
11 assignment of the Asserted Patents.**

12 Cox asks the Court for a declaratory judgment that the assignments of the  
13 Asserted Patents from MaxLinear to Entropic are void. 1043 DE 266-1 ¶¶ 580–82.  
14 The only alleged basis for voiding the assignments is that they purportedly violate  
15 the IPR Policy. *See id.* ¶ 567. As detailed in previous sections of this Motion, Cox  
16 alleges that the assignments violate the IPR Policy because they omit language  
17 required by the IPR Policy, because they purport to be free of encumbrances, and  
18 generally because they would allow the patent owner to circumvent the policy’s  
19 FRAND licensing obligations. *See id.* ¶ 576. To reiterate, none of these things is an  
20 actual breach of the IPR Policy. *Supra* § IV.A.1.a.

21 It is well-established that an assignment is not void simply because it fails to  
22 recite an existing encumbrance, nor does that omission somehow wipe away a prior  
23 encumbrance. “[A]n assignee takes a patent subject to the legal encumbrances  
24 thereon.” *Datatreasury Corp. v. Wells Fargo & Co.*, 522 F.3d 1368, 1372 (Fed. Cir.  
25 2008). “***This occurs whether or not an assignee had notice.***” *Innovus Prime, LLC  
26 v. Panasonic Corp.*, 2013 WL 3354390, at \*5 (N.D. Cal. Jul. 2, 2013) (emphasis  
27 added). As such, the assignee “takes title to the patent subject to [existing] licenses,  
28

1 of which he must inform himself as best he can." *Id.* (emphasis added); *see also id.*  
2 ("Assignment transfers assignor's contract rights, 'leaving them in full force and  
3 effect.'"') (quoting *Medtronic AVE, Inc. v. Advanced Cardiovascular Sys., Inc.*, 247  
4 F.3d 44, 60 (3d Cir. 2001)).

5 Nor can Cox point to any language in the IPR Policy that purports to void third  
6 party assignments. On the contrary, section 5.1.2 of the IPR Policy provides that "the  
7 licensing obligations under this IPR Policy are intended to be binding (e.g., as  
8 encumbrances) on all successors-in-interest regardless of whether such provisions  
9 are included." IPR Policy § 5.1.2.

10 Lastly, Cox's allegations are factually deficient because the Patent Purchase  
11 Agreement between MaxLinear and Entropic [REDACTED]. *See PPA* § 5.7 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]);  
15 *see also PPA* at Exhibit I ([REDACTED]). Therefore,  
16 Cox has pleaded no factual or legal basis for voiding the patent assignments.

17 **V. CONCLUSION**

18 For the foregoing reasons, Entropic respectfully requests that this Court  
19 dismiss Cox's Amended Counterclaims that Entropic tortiously interfered with the  
20 MoCA IPR Policy (Count III) and that the patent assignments from MaxLinear to  
21 Entropic are void (Count II), with prejudice.

22 Dated: February 6, 2024

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## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Plaintiff Entropic Communications, LCC, certifies that this brief contains 6,367 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 6, 2024

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